

Assembly Bill No. 3342

CHAPTER 592

An act to amend Sections 10250.2 and 10261 of, to add Sections 10238.8, 10239.36, 10250.25, 10250.51, 10250.52, 10250.53, 10250.54, 10250.56, and 10250.58 to, to repeal Sections 10238.3, 10238.4, 10238.45, and 10238.5 of, and to repeal Article 6 (commencing with Section 10237) and Article 6.5 (commencing with Section 10239) of Chapter 3 of Part 1 of Division 4 of, the Business and Professions Code, and to add Section 25707 to the Corporations Code, relating to real property.

[Approved by Governor September 15, 1996. Filed
with Secretary of State September 17, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3342, Knowles. Real estate: real property securities dealers: time-share projects.

(1) Existing law provides for regulation of real property securities dealers by the Commissioner of Real Estate. A person acting as a real property securities dealer must be licensed as a real estate broker, and a permit from the commissioner is required before real property security may be sold by the issuer or real property securities dealer to the public. Existing law also provides for conservatorship and liquidation proceedings, as specified, with respect to real property securities dealers.

This bill would repeal the provisions requiring a permit from the commissioner before real property security may be sold, and would provide that no conservatorship or liquidation proceeding shall be commenced on or after the effective date of this act.

The bill would also provide for the repeal of other existing provisions regulating real property securities dealers upon notification by the commissioner to the Secretary of State that the last pending conservatorship or liquidation proceeding commenced prior to the effective date of this act has been terminated.

The bill would provide that certain permits, orders, and conditions issued or imposed under these provisions prior to repeal shall remain in effect, as specified. Following the repeal, the permits, orders, and conditions would be deemed to have been imposed under the Corporate Securities Law of 1968. The bill would enact other transition provisions.

(2) Existing law regulates the sale, lease, and offer for sale or lease in this state of time-share projects situated outside this state and qualified resort vacation clubs, as specified. Existing law provides that the provisions that regulate real property securities dealers, which

would be repealed by this bill, apply to the sale or lease or offering of these time-share projects.

This bill would enact provisions to replace the provisions that would be repealed by this bill. Among other things, it would do the following:

It would define the terms “sale” and “sell” with respect to these time-share projects and vacation clubs to include an offer or attempt to sell, a solicitation of a sale, a contract of sale, or an exchange, as specified.

It would require a subdivider or person offering one of these interests for sale to first obtain a permit from the Real Estate Commissioner, and would enact other related provisions.

The bill would also authorize the commissioner to order a person to desist and refrain from violating the laws governing these activities, and would allow a person injured by a transaction that is in violation of the law to recover damages, interest, and attorney’s fees, as specified.

It would provide that certain acts are public offenses, punishable by fine and imprisonment.

(3) This bill would incorporate additional changes in Section 10250.2 of the Business and Professions Code, proposed by AB 2530, to be operative only if AB 2530 and this bill are both chaptered and become effective January 1, 1997, and this bill is chaptered last.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 10238.3 of the Business and Professions Code is repealed.

SEC. 2. Section 10238.4 of the Business and Professions Code is repealed.

SEC. 3. Section 10238.45 of the Business and Professions Code is repealed.

SEC. 4. Section 10238.5 of the Business and Professions Code is repealed.

SEC. 5. Section 10238.8 is added to Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, to read:

10238.8. (a) This article shall remain operative as long as a conservatorship or liquidation proceeding pursuant to Article 6.5 (commencing with Section 10239) of Chapter 3 of Division 4, that was



commenced prior to the effective date of the act enacting this section, remains active.

(b) Notwithstanding any other provision of this article, no conservatorship or liquidation proceeding shall be commenced on or after the effective date of the act enacting this section.

(c) The commissioner shall determine when the last pending proceeding described in subdivision (a) is terminated. The commissioner shall submit a notice of that determination to the Secretary of State, and this article shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 6. Section 10239.36 is added to Article 6.5 (commencing with Section 10239) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, to read:

10239.36. (a) This article shall remain operative as long as a conservatorship or liquidation proceeding pursuant to Article 6.5 (commencing with Section 10239) of Chapter 3 of Division 4, that was commenced prior to the effective date of the act enacting this section, remains active.

(b) Notwithstanding any other provision of this article, no conservatorship or liquidation proceeding shall be commenced on or after the effective date of the act enacting this section.

(c) The commissioner shall determine when the last pending proceeding described in subdivision (a) is terminated. The commissioner shall submit a notice of that determination to the Secretary of State, and this article shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 7. Section 10250.2 of the Business and Professions Code is amended to read:

10250.2. (a) The sale or lease, or the offering for sale or lease, of lots or parcels in a subdivision shall be governed by this article and Chapter 1 (commencing with Section 11000) of Part 2, insofar as applicable.

(b) The commissioner shall apply the provisions of Sections 11018 and 11018.5, after taking into consideration the differences in the applicable laws of the various states with respect to subdivisions, to afford substantially the same level of public protection to purchasers of an interest in a subdivision offering governed by this article as is afforded to purchasers of subdivision interests situated entirely within this state.

The commissioner may adopt regulations reasonably necessary to enforce this article.

SEC. 7.5. Section 10250.2 of the Business and Professions Code is amended to read:

10250.2. (a) The sale or lease, or the offering for sale or lease, of lots or parcels in a subdivision shall be governed by this article and Chapter 1 (commencing with Section 11000) of Part 2, insofar as applicable.



(b) Subject to the provisions of Sections 11018.8, 11018.9, 11018.10, 11018.11, and 10250.8, the commissioner shall apply the provisions of Sections 11018 and 11018.5, after taking into consideration the differences in the applicable laws of the various states with respect to subdivisions, to afford substantially the same level of public protection to purchasers of an interest in a subdivision offering governed by this article as is afforded to purchasers of subdivision interests situated entirely within this state.

The commissioner may adopt regulations reasonably necessary to enforce this article.

SEC. 8. Section 10250.25 is added to the Business and Professions Code, to read:

10250.25. As used in this article, “sale” or “sell” includes every issuance, creation for resale, disposition, or attempt to dispose of any interest in a subdivision for value and includes all of the following, whether done directly or by circular letter, advertisement, radio or television broadcast, or otherwise: an offer to sell, an attempt to sell, a solicitation of a sale, a contract of sale, or an exchange.

SEC. 9. Section 10250.51 is added to the Business and Professions Code, to read:

10250.51. Whenever the commissioner finds that any person is violating the provisions of this article, that any person is conducting business in an unsafe or injurious manner, that the further sale of subdivision interests under the provisions of this article would be unfair, unjust, or inequitable, or that the method used in those sales would be a fraud upon the purchasers, the commissioner may order the person to desist and refrain from violating the provisions of this article or from further sales in accordance with the procedures set forth in Section 10086.

SEC. 10. Section 10250.52 is added to the Business and Professions Code, to read:

10250.52. No interest in a subdivision, as defined in Section 10250.1, shall be sold to the public unless either the subdivider or person offering the interest for sale first obtains a permit from the commissioner.

SEC. 11. Section 10250.53 is added to the Business and Professions Code, to read:

10250.53. If the commissioner finds that the proposed offering of interest in a subdivision, as defined in Section 10250.1, meets the applicable requirements of this article, the commissioner shall issue to the applicant a permit authorizing the sale or the offering for sale of the subdivision interest upon those terms and conditions as the commissioner may provide in the permit. Otherwise, the commissioner shall deny the application and refuse the permit, and notify the applicant in writing of his or her decision.

SEC. 12. Section 10250.54 is added to the Business and Professions Code, to read:



10250.54. Any applicant objecting to the denial of a permit or the conditions of a permit may apply for a hearing and shall be granted a hearing by the commissioner upon the legality or reasonableness of the denial or the conditions.

SEC. 13. Section 10250.56 is added to the Business and Professions Code, to read:

10250.56. Any person who does any of the following acts is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment in the state prison, or in a county jail, not exceeding one year, or by both fine and imprisonment:

(a) In any application to the commissioner or in any proceeding before the commissioner, or in any examination, audit, or investigation made by the commissioner or on his or her authority, knowingly makes any false statement or representation, or, with knowledge of its falsity, files or causes to be filed in the office of the commissioner any false statement or representation in a required report.

(b) Issues, circulates, or publishes, or causes to be issued, circulated, or published any advertisement, pamphlet, or circular concerning any subdivision that contains any statement that is false or misleading, or otherwise likely to deceive a reader thereof, with knowledge that it contains a false, misleading, or deceptive statement.

(c) In any respect willfully violates or fails to comply with any provision of this article, or willfully violates or fails, omits, or neglects to obey, observe, or comply with any order, decision, demand, requirement, or permit, or any part or provisions thereof, of the commissioner under this article.

(d) With one or more other persons, conspires to violate any permit or order issued by the commissioner of any provision of this article.

SEC. 14. Section 10250.58 is added to the Business and Professions Code, to read:

10250.58. Every person sustaining an injury resulting from a transaction subject to this article that was in violation of the provisions of the article may recover in a civil action the amount of the damages with interest, as awarded by the court, from the date of the injury, and shall be entitled to be awarded reasonable attorney's fees. The action shall be brought within three years from the date of the transaction notwithstanding the date the injury was discovered.

SEC. 15. Section 10261 of the Business and Professions Code is amended to read:

10261. A person acting as a principal or agent may not in this state sell or lease, or offer for sale or lease, interests in a qualified resort vacation club, except as provided in this article, in Article 8.5



(commencing with Section 10250), and Chapter 1 (commencing with Section 11000) of Part 2, insofar as is applicable.

SEC. 16. Section 25707 is added to the Corporations Code, to read:

25707. (a) All permits and orders issued under Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, and all conditions imposed pursuant to those provisions, shall remain in effect for the period of time that they would have remained in effect if those provisions had not been repealed by the act enacting this section. Following the repeal of those provisions, the permits, orders, and conditions shall be deemed to have been issued or imposed under this division. An application to amend, extend, modify, revoke, or set aside a permit or order shall be filed under this division and is subject to this division.

(b) An application pending under Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, on the effective date of this section, shall be processed by the Real Estate Commissioner subject to those provisions as they were in effect on December 31, 1996, until each application that was pending on the effective date of this section is granted or denied by the Real Estate Commissioner.

(c) Except as expressly provided by this section, all actions, prosecutions, or proceedings under Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code that are pending prior to the effective date of this section, or that otherwise could be initiated based on facts or circumstances occurring prior to the effective date of this section, shall be governed by those provisions.

(d) No civil action may be brought to enforce any liability under Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, unless it is brought within the period of limitations that applied to the action at the time the action accrued.

(e) Judicial review of orders under Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code that had not commenced prior to the effective date of this section shall be governed by Section 25609, except that no review proceeding shall be commenced unless the petition is filed within the applicable period of limitations that applied to a review proceeding when the order was issued. Judicial review of an order of the Real Estate Commissioner made pursuant to subdivision (b) shall be governed by the provisions of law applicable to those proceedings on December 31, 1996.

SEC. 17. Section 7.5 of this bill incorporates amendments to Section 10250.2 of the Business and Professions Code proposed by both this bill and AB 2530. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 10250.2 of the Business and Professions



Code, and (3) this bill is enacted after AB 2530, in which case Section 7 of this bill shall not become operative.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

